Supreme Court, U.S.
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No. 97-883

In The

Supreme Court of the United States

October Term, 1997

JOHN L. GRADY

Petitioner,

vs.

SOVEREIGN ORDER OF SAINT JOHN OF JERUSALEM, INC.; SOVEREIGN ORDER OF SAINT JOHN OF JERUSALEM - KNIGHTS OF MALTA,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Ohio

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent Sovereign Order of Saint John of Jerusalem, Inc. is a non-profit corporation and has no parent company or nonwholly owned subsidiaries.

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This case centers around the right to use a registered trademark, "Sovereign Order of St. John of Jerusalem - Knights of Malta." This mark is a collective membership mark, and is used to show membership in the group bearing that name (the **"Order"**). This mark is owned by the Sovereign Order of St. John of Jerusalem, Inc. (the **"Corporation"**). The Corporation has no parent or subsidiary corporations, and has no affiliated groups other than the Order itself. Collectively the Order and the Corporation are referred to as the **"OSJ"**. John L. Grady (**"Grady"**) is an expelled former member of the Order.

In his Petition, Grady argues at length that his claims depend upon an adjudication of who or what group in the current embodiment of "the Order," and that failure to make such a finding misconstrues the Lanham Act and denies Grady his Constitutional rights of free speech and religious freedom.

As set forth in detail below, each of these contentions is without merit.

The determination of the "true Order" is a non-justiciable question which the District Court correctly refused to consider. The prior decisions denying Grady's challenges to the registered trademark were correct, and do not misconstrue the Lanham Act. Finally, Grady is free to exercise his Constitutional rights of expression and worship, so long as he does so in accordance with other recognized limitations. Intentional misuse of another's registered trademark is not a privilege granted to Grady by the Constitution or otherwise.

REASONS FOR DENYING THE WRIT

I.

DETERMINATION OF THE "TRUE ORDER" IS A NON-JUSTICIABLE QUESTION.

Grady's contention on page 50 and elsewhere in his Petition that examining the legitimacy of the lineage of his group and of the Respondent Order is necessary for a full adjudication of this case is incorrect. The determination of which group is the "true Order" is, in fact, a non-justiciable issue. In a dispute among the members of a religious organization with an "hierarchical" polity, a civil court may inquire only whether such a polity exists, what its supreme authority is, and what decision that authority has made. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 49 L. Ed. 2d 151, 162 (1976). Where expulsions or lapses from membership of former members in an hierarchical religious organization are involved, the courts may not investigate the religious doctrines underlying the expulsion, and may not question the procedures the organization employs to expel dissidents, to affiliate or disaffiliate with other groups, or to select officers. *See Serbian Eastern Orthodox Diocese*, 426 U.S. at 708-10, 49 L. Ed. 2d at 162-63; *Nance v. Busby*, 18 S.W. 874, 879, 881 (Tenn. 1892). The lower courts' decisions in this case are fully consistent with this basic legal principle.

The polity of the OSJ is hierarchical both internally, with the Order's ultimate, unreviewable authority in the General Chapter of Knights; and externally, with the Corporation exercising supervisory control. *See Smith v. Church of God*, 326 F. Supp. 6, 9 n.6 (D. Md. 1971); *Jandron v. Zuendel*, 139 F. Supp. 887, 888-89 (N.D. Ohio 1955). Therefore, the courts lack authority to "review" the General Chapter's or the Corporation's interpretation and application of "the ancient

acts, precedents, and the inherited power and authority of the Order to confer or grant letters patent or diplomas of membership" or to "disturb th[e Corporation's] interpretation of the [OSJ's] law from which th[e Corporation] claim[s] to derive [its] authority to grant or deny" membership. Affidavit of Leonard J. Messineo, Jr., District Court File No. 6, Ex. A, art. EIGHTH, ¶ 7; *Jandron*, 139 F. Supp. at 889.

Therefore, the courts "must take the fact of expulsion [of Grady] as conclusive proof that [Grady and the other former members] are not now members" of the Order and are "not entitled to any rights or privileges * * * from membership therein." *Partin v. Tucker*, 172 So. 89, 91 (Fla. 1937). Grady's subjective views to the contrary have no evidentiary value. *Second Baptist Church of Reno v. Mount Zion Baptist Church*, 466 P.2d 212, 216 (Nev. 1970). Further, the courts may not entertain any argument that the Corporation or General Chapter were "arbitrary," that they did "not follow[their] own laws and procedures in arriving at [their] decisions," or that those decisions or procedures went "beyond their jurisdictions." *Serbian Eastern Orthodox Diocese*, 426 U.S. at 712-24, 49 L. Ed. 2d at 165-71. Rather, the courts must accept as binding and enforce those decisions as final and unreviewable. *Bouldon v. Alexander*, 82 U.S. (15 Wall.) 131, 139-40, 21 L. Ed. 69, 71 (1872). Clearly, the Sixth Circuit has done so in this case. In support of their ruling that Grady had no right to use the registered trademark the court specifically found that "the Corporation's Board of Directors expelled Grady from the Order in 1983. Despite his expulsion, [Grady] continued to use the trademark. . . ." *Sovereign Order of St. John of Jerusalem, Inc. v. Grady*, 119 F.3d 1236, 1239 (6th Cir. 1997).

Note that Grady does not claim to have separated himself from the OSJ and formed some *other*, *different*, and *independent* "sect." Rather, he claims to be the leader of the Order itself,

and to have displaced the validly pre-existing officers thereof. Numerous civil cases have decided the membership *vel non* of individuals in religious organizations. For example, in *Piletich v. Deretich*, 328 N.W. 2d 696 (Minn. 1983), "certain members" of a church

> stopped participating and paying dues and thus, under the church's by-laws, [were] no longer members. . . . The majority faction . . . continued to operate and maintain the church property.

When the dispute resulted in litigation, the court refused to

> dispose of the matter on the ground that the controversy is doctrinal in nature and therefore beyond the purview of the courts. . . .
>
> . . . [T]his action . . . would accurately be termed a matter of property ownership *and membership qualification, to be determined by documents and proceedings of the . . . church government.* Since it is not a doctrinal matter . . . , *there is no first amendment barrier to resolution by the civil courts.* We proceed, therefore, to a determination on the merits.

On the merits, the court found the dissidents were not members, because they "chose to leave the church," and "ceased to pay dues as required." *Id.* at 698, 700, 702. This holding likewise applies to Grady.

Nonmembers — including former members — of a religious organization cannot falsely hold themselves out as members or officials, immune from judicial control. *E.g.*, *Lutheran Free Church v. Lutheran Free Church (Not Merged)*,

141 N.W. 2d 827 (Minn. 1966) (injunction against use of name by dissidents). "[A] religious, benevolent or fraternal organization is entitled to protect the use of its name against those who secede." *National Board of YWCA v. YWCA of Charleston, S.C.*, 335 F. Supp. 615, 621-22 (D.S.C. 1971); *accord Benevolent and Protective Order of Elks of the U.S.A. v. Improved B. & P.O. of Elks of the World*, 122 Tenn. 141, 145-46 (1909). *A fortiori*, a religious organization is entitled to protection against persons expelled, or whose memberships have lapsed or otherwise been forfeited. *See Lindstrom v. Tell*, 154 N.W. 969, 971 (Minn. 1915).

The reason for the decisions in cases such as these is that

> [t]he right to use the name [of a religious organization] inheres in the institution, not in its members; and, when they cease to be members of the institution, use by them of the name is misleading and, if injurious to the institution, should be enjoined. *No question of religious liberty is involved.* Men have the right to worship God according to the dictates of conscience; *but they have no right in doing so to make use of a name which will enable them to appropriate the good will which has been built up by an organization with which they are no longer connected.*

Purcell v. Summers, 145 F.2d 979, 987 (4th Cir. 1944) (emphasis supplied).

Members dissatisfied with an organization have

> a right to withdraw and organize a new order; *but they ha*[*ve*] *no right . . . to adopt the name of the original order, or to hold themselves out as a branch*

> *of that order*. To do so constitutes a fraud upon the original order and upon the public, and, if allowed, would result in enabling the rival organization to appropriate to itself the advantages which the original order had built up through years of effort. *A more glaring example of unfair competition could not well be imagined.*

Grand Lodge of I.B. & P.O. Elks of the World v. Grand Lodge, Improved, 50 F.2d 860, 864 (4th Cir. 1931) (emphasis supplied).

Clearly, where (as here) dissidents "were formerly associated with [the order] and are no longer associated," the evil is especially serious, for "[t]he former association makes [the dissidents' misrepresentation] much more injurious to [the order] than if the same wrong were committed by a stranger." *Iowa Farmers Union v. Farmers' E. & C. Union*, 247 F.2d 809, 816 (8th Cir. 1957). The lower courts' injunction prohibiting Grady from using the registered trademark is fully appropriate and consistent with this authority.

II.

GRADY'S CHALLENGES TO THE REGISTERED TRADEMARK HAVE BEEN APPROPRIATELY DISMISSED PURSUANT TO THE LANHAM ACT.

This case is factually far less complex than Grady asserts. The record establishes the following facts:

1. In 1979, Grady joined the OSJ. *Sovereign Order of St. John of Jerusalem, Inc. v. Grady*, 119 F.3d at 1239.

2. The OSJ as then organized included two

aspects — the "Order" and the "Corporation." *Id.* at 1238.

3. The Corporation owns the mark "Sovereign Order of St. John of Jerusalem - Knights of Malta." This mark is a collective membership mark, denoting membership in the Order. *Id.* at 1238-39.

4. The Corporation, acting through its officers and directors, licenses the mark to approved members of the Order. *Id.* at 1237.

5. Since December 31, 1982, Grady has not been a member of the Order. *Id.*

6. Although he applied for a license, his application was denied and Grady is not authorized to use the mark. *Id.*

7. Despite his expulsion from the Order, Grady continued for well over a decade to use the name, marks and symbols of the Order, and in 1991 claimed to have "reconstituted" the Order with himself as its leader. *Id.*

8. Following a trial in which the jury found Grady had intentionally infringed and misused this trademark, Grady was enjoined from using the mark and from claiming membership in the Order. *Id.* at 1239-40.

Grady's challenges to the validity of the registered trademark and the actions of the Corporation in licensing the use of that mark are wholly without merit. Indeed, many of

the factual premises used to support his theory of the alleged "takeover" of the Order are incorrect, and other material facts are omitted from his recitation. Grady's Petition proceeds from the erroneous assumption that the Order and the Corporation are fundamentally at odds, and that the actions of the Corporation were unauthorized or otherwise improper. Petition at 30-31, 61-62. Indeed, on page 21 of the Petition, Grady asserts that the Corporation "was virtually unknown to the membership of the Order." This is surprising in that on page 26 Grady correctly notes that only seven months after he joined the Order, all members were advised that the Supreme Council had directed the Corporation to proceed with licensing the membership to use the registered trademark. Further, though Grady admits on page 34 the Corporation did proceed with the licensing requirement announced on page 26, he claims on page 62 that such licenses have not been issued. Indeed, as the Sixth Circuit found, Grady's application for a license from the Corporation was denied, following which he was expelled from the Order. 119 F.3d at 1239. Grady has made no attempt to explain these internal inconsistencies in his Petition. Quite simply, Grady is a disgruntled former member of the Order who, for reasons he alone may know, refuses to accept the fact that he is no longer even a member of the Order, let alone its head. Although his Petition contains numerous misstatements and omissions, the most significant are the following:

1. Although Grady objects to or questions the validity of various prior acts of the OSJ, it is clear that the Corporation was organized and affiliated with the Order well before Grady joined the Order. The Corporation was also the owner of the registered trademark for many years prior to Grady's connection to the Order. 119 F.3d at 1238-39.

2. Grady never held any office or position in the Corporation, and thus has never had standing to challenge the Corporation's acts, pursuant to 8 Del. Code § 225. In addition, as a nonmember of the Order, Grady lacks standing to challenge the Order's delegation of authority to the Corporation. *See Capetola v. Orlando*, 426 F. Supp. 616, 617, 194 U.S.P.Q. 319, 320 (E.D. Pa. 1977). During the time Grady was a member of the Order, he never challenged the Corporation's authority. Indeed, during the 1981 General Chapter, Grady voted to approve the Corporation's actions in expelling several members of the Order. Affidavit of Salvatore T. Messineo, District Court File No. 5, ¶¶ 48-58; *see also Sovereign Order of St. John of Jerusalem v. Messineo*, 572 F. Supp. 983, 985-987 (E.D. Pa. 1983) (ruling on preliminary injunction)(detailed discussion of the role of the Corporation in the OSJ and the General Chapter of 1981).

3. A challenge to the Corporation's actions was filed by Thorbjorn Wiklund, a former director of the Corporation who was expelled in 1981, and others who claimed Wiklund was the properly elected head of the OSJ. *Sovereign Order of St. John of Jerusalem - Knights of Malta v. Salvatore T. Messineo, et al.*, No. 83-0032 (E.D. Pa.). By Stipulated Judgment and Consent Decree entered 10/26/83, the Corporation's actions were affirmed and validated. *Id.*

4. As a result of that litigation, Wiklund's

purported expulsion of the Messineos, relied upon in Paragraph 12 of Grady's factual history, was declared invalid. *Id.*

5. Contrary to the assertions in Paragraphs 7-11 in Grady's factual history, the authority of the Corporation over the Order has no connection to Romanoff's appointment as Imperial Protector or his actions in 1981 (or at any other time), but derives from the Corporation's 1956 Certificate of Incorporation, articles THIRD, ¶ 2, and EIGHTH, ¶ 7. Affidavit of Leonard J. Messineo, Jr., District Court File No. 6, Ex. A; Affidavit of Salvatore T. Messineo, District Court File No. 5, ¶¶ 6-8. Romanoff was unknown to the leaders of the OSJ and the Corporation in 1956. Affidavit of Aleksei Nicholaevich Romanoff, District Court File No. 27, ¶ 13. Grady has proffered no evidence the Corporation did not obtain or could not have obtained its authority from the Order. Affidavit of Leonard J. Messineo, Jr., District Court File No. 22, ¶¶ 9-18.

6. William von Peters, an original co-defendant with Grady in this action, has renounced and disaffirmed his actions related to the Association of Family Commanders of Hereditary Knights of Saint John. von Peters now says that the actions of this Association, culminating in the "reestablishment" of the Order under Grady, were improper and of no effect. In contradiction to page 55 of the Petition, von Peters does not recognize Grady as the head of the Order nor does he believe it

is headquartered in Tennessee. Order of November 1, 1995, District Court File. No. 136.

7. Benjamin von Stahl, the other original co-defendant in this action, has likewise renounced and disaffirmed his actions related to the Association, and acknowledged that he has had no authority over the Order since 1981. Order of November 1, 1995, District Court File No. 135. Of the original three founders of the Association, only Grady continues to assert that his actions were valid.

8. The validity of the registered trademark was challenged at length in *William H. Coleman, II v. Sovereign Order of St. John of Jerusalem, Inc.*, Cancellation No. 14,038 (Trademark Trial and Appeal Board, original Petition filed October 8, 1983). The Second Amended Petition was denied by Opinion dated June 14, 1990. Coleman appealed the Board's decision to the Eastern District of Pennsylvania, which entered summary judgment against him. *William H. Coleman, II v. Sovereign Order of St. John of Jerusalem, Inc.*, No. 90-5301 (E.D. Pa. Feb. 9, 1993).

9. Although Grady has on many occasions claimed "fraud" in the granting of this trademark, he has never presented any proof on this issue. Even his Tender of Proof before the District Court makes only conclusory allegations of wrongdoing, without providing any factual basis to support this claim. 119

F.3d at 1240, 1241. Fraud was also alleged by Coleman in the trademark cancellation action noted above, and rejected by both the Board and the District Court.

10. Prior to his expulsion from the Order, Grady filed the required application for licensure with the Corporation. This application was rejected. 119 F.3d at 1239.

Other persons, notably Wiklund and Coleman, have had far greater standing to challenge the actions Grady raises in his Petition. All such challenges have failed, and properly so. As the jury found, Grady used the registered trademark for more than a decade, knowing that such use was an infringement. He has had a full hearing, both at trial and on appeal. The issues he now raises are all invalid, and form no basis for another rehashing of his unsupported allegations of wrongdoing.

III.

GRADY'S CONSTITUTIONAL RIGHTS HAVE NOT BEEN INFRINGED.

Grady also asserts that the decision below denies his Constitutional rights to worship as he pleases and to freely express himself. These assertions are also wholly without merit.

Grady is free to follow whatever religion he chooses, and to worship accordingly. He is likewise entitled to freedom of expression as set forth in the First Amendment. These rights do not, however, confer upon Grady the privilege of infringing another's registered trademark. It is that privilege alone which

Grady seeks, and which the lower courts have properly denied him. It has been held that in reviewing such an injunction "religious freedom is not at issue" because an injunction would never deny the dissidents the right to practice their religious beliefs "in whatever manner they choose," but instead would simply prevent them "from appropriating to themselves the good will and identity" of an organization to which they do not belong. *Jandron v. Zuendel*, 139 F. Supp. 887, 889 (N.D. Ohio 1955).

Further, after full consideration of these claims, the District Court properly concluded that the First Amendment prevented the courts from disturbing Grady's expulsion from the Order:

> Finally, in Part C of the third counterclaim, the defendants allege that their First amendment rights to freedom of religion have been violated by the actions of the Plaintiffs. Defendants have presented no evidence that any religious freedom has been violated. Indeed, there is no evidence that the Order, in any of its incarnations, is a religious organization at all. By evidence presented by both sides, the Order is a lay organization. While apparently associated with the Catholic church historically, the Order does not even require that its members be Catholic. Since membership in the Order is not an inherently religious act, Part C of the third counterclaim must fail.
>
> Even if the Order were a religious organization, it is clear that it would be legally able to police its own membership and policies. In *Paul v. Watchtower Bible & Tract Soc'y*, 819 F.2d 875 (9th Cir.), *cert. denied*, 484 U.S. 926 (1987), the Ninth Circuit held that the Jehovah's Witnesses were entitled to engage

> in their practice of shunning former members of the church. *Id.* at 876. This holding was reached on the ground that imposing tort damages on the church for actions taken pursuant to religious belief would create an unconstitutional burden on the free exercise of religion. *Id.* at 880. In *Grunwald v. Bornfreund*, 696 F.Supp. 838 (E.D.N.Y. 1988), the Eastern District of New York noted that "federal courts will not interfere with the decisions of a religious body adjudicating the relationships of members in that body; as a matter of jurisprudence federal courts will defer to the decision of the religious body." *Id.* at 840. Indeed, "it is contrary to the first amendment for a court, either federal or state, to engage in an examination of ecclesiastical doctrine, and unless such examination cannot be avoided, a court must defer to the decisions of a religious body." *Id.* Thus, the Order would be free to handle its own membership in a way that it saw fit, including the expulsion of the defendants. If it saw fit to disassociate itself from the defendants, and to force them to practice their "religion" elsewhere, the courts of the land would be prevented by the First Amendment from interfering. Put as simply as possible, the considerable ecclesiastical wrangling engaged in on both sides, even if this Court were to find the Order to be a religious body, is beyond the purview of this Court.

Memorandum of October 12, 1995 at 6-7.

In short, Grady can worship however he pleases and express himself as he sees fit, within the limits recognized by our system of jurisprudence. Grady has knowingly infringed upon another's registered trademark for more than a decade.

As shown by his Petition, he would gladly continue his infringement in the future. Indeed, he seems to feel it is his right to do so. Such conduct cannot, and should not, be tolerated.

CONCLUSION

Grady's claims are all without merit. As an expelled former member of the Order, Grady has no right to continue to use the Order's name, marks and symbols. The injunctions issued against him are appropriate and his Petition should be denied.

Respectfully submitted,

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